

# PROPOSED AMENDMENT

## EH 1006 # 13

### DIGEST

PROPOSED COMMITTEE AMENDMENT TO EHB 1006. Provides that before March 1, 2015, the department of correction (department) shall estimate the amount of any operational cost savings that will be realized in the state fiscal year ending June 30, 2015, from a reduction in the number of individuals who are in the custody of the department of correction that is attributable to the sentencing changes made under the bill. Specifies that if the department estimates that such operational cost savings will be realized, the department may, after review by the budget committee and approval by the budget agency, do the following: (1) Make additional grants to counties for community corrections programs from funds appropriated to the department for the department's operating expenses. (2) Transfer funds (from funds appropriated to the department for the department's operating expenses) to the judicial conference of Indiana to be used by the judicial conference of Indiana to provide additional financial aid for the support of court probation services. Provides that the maximum aggregate amount of these additional grants and transfers may not exceed the lesser of the amount of operational cost savings or \$11,000,000. Reduces the sentence for: (1) arson with intent to defraud; (2) institutional criminal mischief; (3) an offense against intellectual property; and (4) auto theft; from a Level 5 to a Level 6 felony. Reduces the maximum penalties for certain felonies as follows: (1) Level 1 felonies, from 50 to 40 years; (2) Level 3 felonies, from 20 to 15 years; (3) Level 4 felonies, from 12 to 10 years; and Level 5 felonies, from six to five years. Reduces the advisory sentence for Level 3 felonies from ten years to eight years. Provides that a person less than eighteen years of age who possesses an indecent image of another person less than eighteen years of age commits a Class A misdemeanor if: (1) the persons are in a dating relationship; (2) the age difference between the persons is not more than four years; and (3) the person acquiesced in the taking or transmission of the indecent image. Specifies that a person who is eligible to be prosecuted for possession of an indecent image as a misdemeanor may not be prosecuted for possession of child pornography or child exploitation.

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- 1 Delete the title and insert the following:
  - 2 A BILL FOR AN ACT to amend the Indiana Code concerning
  - 3 criminal law and procedure and to make an appropriation.
  - 4 Page 26, between lines 16 and 17, begin a new paragraph and insert:
  - 5 "SECTION 27. IC 11-12-2-1, AS AMENDED BY P.L.105-2010,
  - 6 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
  - 7 JULY 1, 2014]: Sec. 1. (a) For the purpose of encouraging counties to
  - 8 develop a coordinated local corrections-criminal justice system and
  - 9 providing effective alternatives to imprisonment at the state level, the
  - 10 commissioner shall, out of funds appropriated for such purposes, make
  - 11 grants to counties for the establishment and operation of community
  - 12 corrections programs. Appropriations intended for this purpose may not

1 be used by the department for any other purpose. Money appropriated  
2 to the department of correction for the purpose of making grants under  
3 this chapter and any financial aid payments suspended under section 6  
4 of this chapter do not revert to the state general fund at the close of any  
5 fiscal year, but remain available to the department of correction for its  
6 use in making grants under this chapter.

7 **(b) Before March 1, 2015, the department shall estimate the**  
8 **amount of any operational cost savings that will be realized in the**  
9 **state fiscal year ending June 30, 2015, from a reduction in the**  
10 **number of individuals who are in the custody or made a ward of**  
11 **the department of correction (as described in IC 11-8-1-5) that is**  
12 **attributable to the sentencing changes made in HEA 1006-2014 as**  
13 **enacted in the 2014 session of the general assembly. The**  
14 **department shall make the estimate under this subsection based on**  
15 **the best available information. If the department estimates that**  
16 **operational cost savings described in this subsection will be**  
17 **realized in the state fiscal year ending June 30, 2015, the following**  
18 **apply to the department:**

19 **(1) The department shall certify the estimated amount of**  
20 **operational cost savings that will be realized to the budget**  
21 **agency and to the auditor of state.**

22 **(2) The department may, after review by the budget**  
23 **committee and approval by the budget agency, make**  
24 **additional grants as provided in this chapter to counties for**  
25 **the establishment and operation of community corrections**  
26 **programs from funds appropriated to the department for the**  
27 **department's operating expenses for the state fiscal year.**

28 **(3) The department may, after review by the budget**  
29 **committee and approval by the budget agency, transfer funds**  
30 **appropriated to the department for the department's**  
31 **operating expenses for the state fiscal year to the judicial**  
32 **conference of Indiana to be used by the judicial conference of**  
33 **Indiana to provide additional financial aid for the support of**  
34 **court probation services under the program established under**  
35 **IC 11-13-2.**

36 **(4) The maximum aggregate amount of additional grants and**  
37 **transfers that may be made by the department under**  
38 **subdivisions (2) and (3) for the state fiscal year may not**  
39 **exceed the lesser of:**

40 **(A) the amount of operational cost savings certified under**

1                   subdivision (1); or  
 2                   **(B) eleven million dollars (\$11,000,000).**  
 3       **Notwithstanding P.L.205-2013 (HEA 1001-2013), the amount of**  
 4       **funds necessary to make any additional grants authorized and**  
 5       **approved under this subsection and for any transfers authorized**  
 6       **and approved under this subsection, and for providing the**  
 7       **additional financial aid to courts from transfers authorized and**  
 8       **approved under this subsection, is appropriated for those purposes**  
 9       **for the state fiscal year ending June 30, 2015, and the amount of**  
 10       **the department's appropriation for operating expenses for the state**  
 11       **fiscal year ending June 30, 2015, is reduced by a corresponding**  
 12       **amount. This subsection expires June 30, 2015.**

13       ~~(b)~~ (c) The commissioner shall give priority in issuing community  
 14       corrections grants to programs that provide alternative sentencing  
 15       projects for persons with mental illness, addictive disorders, mental  
 16       retardation, and developmental disabilities."

17       Page 86, between lines 23 and 24, begin a new paragraph and insert:

18       **"(h) It is a defense to a prosecution under this section that:**

- 19               **(1) the person was less than eighteen (18) years of age at the**  
 20               **time the alleged offense was committed; and**  
 21               **(2) the circumstances described in IC 35-45-4-6(a)(2) through**  
 22               **IC 35-45-4-6(a)(4) apply.**

23       **(i) A person is entitled to present the defense described in**  
 24       **subsection (h) in a pretrial hearing. If a person proves by a**  
 25       **preponderance of the evidence in a pretrial hearing that the**  
 26       **defense described in subsection (h) applies, the court shall dismiss**  
 27       **the charges under this section with prejudice."**

28       Page 95, between lines 39 and 40, begin a new paragraph and insert:

29       "SECTION 82. IC 35-43-1-1, AS AMENDED BY P.L.158-2013,  
 30       SECTION 452, IS AMENDED TO READ AS FOLLOWS  
 31       [EFFECTIVE JULY 1, 2014]: Sec. 1. (a) A person who, by means of  
 32       fire, explosive, or destructive device, knowingly or intentionally  
 33       damages:

- 34               (1) a dwelling of another person without the other person's  
 35               consent;  
 36               (2) property of any person under circumstances that endanger  
 37               human life;  
 38               (3) property of another person without the other person's consent  
 39               if the pecuniary loss is at least five thousand dollars (\$5,000); or  
 40               (4) a structure used for religious worship without the consent of

the owner of the structure;  
 commits arson, a Level 4 felony. However, the offense is a Level 3  
 felony if it results in bodily injury to any person other than a defendant  
 and a Level 2 felony if it results in serious bodily injury to any person  
 other than a defendant.

(b) A person who commits arson for hire commits a Level 4 felony.  
 However, the offense is:

(1) a Level 3 felony if it results in bodily injury to any other  
 person; and

(2) a Level 2 felony if it results in serious bodily injury to any  
 other person.

(c) A person who, by means of fire, explosive, or destructive device,  
 knowingly or intentionally damages property of any person with intent  
 to defraud commits arson, a ~~Level 5~~ **Level 6** felony.

(d) A person who, by means of fire, explosive, or destructive device,  
 knowingly or intentionally damages property of another person without  
 the other person's consent so that the resulting pecuniary loss is at least  
 two hundred fifty dollars (\$250) but less than five thousand dollars  
 (\$5,000) commits arson, a Level 6 felony.

(e) A person who commits an offense under subsection (a), (b), (c),  
 or (d) commits a separate offense for each person who suffers a bodily  
 injury or serious bodily injury that is caused by the violation of  
 subsection (a), (b), (c), or (d).

SECTION 83. IC 35-43-1-2, AS AMENDED BY P.L.158-2013,  
 SECTION 453, IS AMENDED TO READ AS FOLLOWS  
 [EFFECTIVE JULY 1, 2014]: Sec. 2. (a) A person who recklessly,  
 knowingly, or intentionally damages or defaces property of another  
 person without the other person's consent commits criminal mischief,  
 a Class B misdemeanor. However, the offense is:

(1) a Class A misdemeanor if the pecuniary loss is at least two  
 hundred fifty dollars (\$250) but less than two thousand five  
 hundred dollars (\$2,500); and

(2) a Level 6 felony if:

(A) the pecuniary loss is at least two thousand five hundred  
 dollars (\$2,500);

(B) the damage causes a substantial interruption or impairment  
 of utility service rendered to the public;

(C) the damage is to a public record; or

(D) the damage is to a law enforcement animal (as defined in  
 IC 35-46-3-4.5).

(b) A person who recklessly, knowingly, or intentionally damages:

(1) a structure used for religious worship;

(2) a school or community center;

(3) the grounds:

(A) adjacent to; and

(B) owned or rented in common with;

a structure or facility identified in subdivision (1) or (2); or

(4) personal property contained in a structure or located at a facility identified in subdivision (1) or (2);

without the consent of the owner, possessor, or occupant of the property that is damaged, commits institutional criminal mischief, a Class A misdemeanor. However, the offense is a Level 6 felony if the pecuniary loss is at least two hundred fifty dollars (\$250). ~~but less than two thousand five hundred dollars (\$2,500); and a Level 5 felony if the pecuniary loss is at least two thousand five hundred dollars (\$2,500).~~

(c) If a person is convicted of an offense under this section that involves the use of graffiti, the court may, in addition to any other penalty, order that the person's operator's license be suspended or invalidated by the bureau of motor vehicles for not more than one (1) year.

(d) The court may rescind an order for suspension or invalidation under subsection (c) and allow the person to receive a license or permit before the period of suspension or invalidation ends if the court determines that the person has removed or painted over the graffiti or has made other suitable restitution.

SECTION 84. IC 35-43-1-7, AS ADDED BY P.L.158-2013, SECTION 458, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 7. (a) A person who knowingly or intentionally and who without authorization:

(1) modifies data, a computer program, or supporting documentation;

(2) destroys data, a computer program, or supporting documentation; or

(3) discloses or takes data, a computer program, or supporting documentation that is:

(A) a trade secret (as defined in IC 24-2-3-2); or

(B) otherwise confidential as provided by law;

and that resides or exists internally or externally on a computer, computer system, or computer network, commits an offense against intellectual property, a Level 6 felony.

(b) ~~However, the offense is a Level 5 felony if the offense is committed for the purpose of devising or executing any scheme or artifice to defraud or to obtain any property."~~

Page 98, between lines 17 and 18, begin a new paragraph and insert:

"SECTION 87. IC 35-43-4-2.5, AS AMENDED BY P.L.158-2013, SECTION 465, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 2.5. (a) As used in this section, "motor vehicle" has the meaning set forth in IC 9-13-2-105(a).

(b) A person who knowingly or intentionally exerts unauthorized control over the motor vehicle of another person, with intent to deprive the owner of:

(1) the vehicle's value or use; or

(2) a component part (as defined in IC 9-13-2-34) of the vehicle; commits auto theft, a Level 6 felony. ~~However, the offense is a Level 5 felony if the person has a prior conviction of an offense under this subsection or subsection (c).~~

(c) A person who knowingly or intentionally receives, retains, or disposes of a motor vehicle or any part of a motor vehicle of another person that has been the subject of theft commits receiving stolen auto parts, a Level 6 felony. ~~However, the offense is a Level 5 felony if the person has a prior conviction of an offense under this subsection or subsection (b)."~~

Page 105, between lines 32 and 33, begin a new paragraph and insert:

"SECTION 92. IC 35-45-4-6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 6. (a) **This section applies only to a person to whom all of the following apply:**

(1) **The person is less than eighteen (18) years of age.**

(2) **The person is not more than four (4) years older than the individual who is depicted in the image or who received the image.**

(3) **The relationship between the person and the individual who received the image or who is depicted in the image was a dating relationship or an ongoing personal relationship. For purposes of this subdivision, the term "ongoing personal relationship" does not include a family relationship.**

(4) **The individual receiving the image or who is depicted in the image acquiesced in the person's conduct.**

(b) **The following definitions apply throughout this section:**

- 1           (1) "Disseminate" means to transfer possession for no direct
- 2           or indirect consideration.
- 3           (2) "Matter" has the meaning set forth in IC 35-49-1-3.
- 4           (3) "Performance" has the meaning set forth in IC 35-49-1-7.
- 5           (4) "Sexual conduct" means sexual intercourse, other sexual
- 6           conduct, exhibition of the uncovered genitals intended to
- 7           satisfy or arouse the sexual desires of any person,
- 8           sodomasochistic abuse, sexual intercourse or other sexual
- 9           conduct with an animal, or any fondling or touching of a child
- 10          by another person or of another person by a child intended to
- 11          arouse or satisfy the sexual desires of either the child or the
- 12          other person.
- 13          (c) A person who, on or by means of a cellular telephone, social
- 14          media web site, or another wireless or cellular communications
- 15          device, knowingly or intentionally:
- 16           (1) produces, presents, exhibits, photographs, records, or
- 17           creates a digitized image of any performance or incident that
- 18           includes sexual conduct by a child at least twelve (12) years of
- 19           age;
- 20           (2) disseminates, exhibits to another person, or offers to
- 21           disseminate or exhibit to another person, matter that depicts
- 22           or describes sexual conduct by a child at least twelve (12)
- 23           years of age; or
- 24           (3) possesses:
- 25           (A) a picture;
- 26           (B) a drawing;
- 27           (C) a photograph;
- 28           (D) a motion picture;
- 29           (E) a digitized image; or
- 30           (F) any pictorial representation;
- 31          that depicts or describes sexual conduct by a child at least
- 32          twelve (12) years of age who the person knows is less than
- 33          sixteen (16) years of age or who appears to be less than sixteen
- 34          (16) years of age, and that lacks serious literary, artistic,
- 35          political, or scientific value;
- 36          commits indecent display by a youth, a Class A misdemeanor.
- 37          (d) Subsection (c) does not apply to a bona fide school, museum,
- 38          or public library that qualifies for certain property tax exemptions
- 39          under IC 6-1.1-10, or to an employee of that school, museum, or
- 40          public library acting within the scope of the employee's

1 **employment when the possession of the listed materials is for**  
 2 **legitimate scientific or educational purposes."**

3 Page 130, between lines 2 and 3, begin a new paragraph and insert:

4 "SECTION 115. IC 35-50-2-4, AS AMENDED BY P.L.158-2013,  
 5 SECTION 655, IS AMENDED TO READ AS FOLLOWS  
 6 [EFFECTIVE JULY 1, 2014]: Sec. 4. **(a)** A person who commits a  
 7 Class A felony (for a crime committed before July 1, 2014) ~~or a Level~~  
 8 ~~1 felony (for a crime committed after June 30, 2014)~~ shall be  
 9 imprisoned for a fixed term of between twenty (20) and fifty (50) years,  
 10 with the advisory sentence being thirty (30) years. In addition, the  
 11 person may be fined not more than ten thousand dollars (\$10,000).

12 **(b) A person who commits a Level 1 felony (for a crime**  
 13 **committed after June 30, 2014) shall be imprisoned for a fixed**  
 14 **term of between twenty (20) and forty (40) years, with the advisory**  
 15 **sentence being thirty (30) years. In addition, the person may be**  
 16 **fined not more than ten thousand dollars (\$10,000)."**

17 Page 130, line 12, strike "twenty (20)" and insert "**fifteen (15)**".

18 Page 130, line 13, delete "ten (10)" and insert "**eight (8)**".

19 Page 130, line 19, strike "twelve (12)" and insert "**ten (10)**".

20 Page 130, line 39, strike "six (6)" and insert "**five (5)**".

21 Renumber all SECTIONS consecutively.

(Reference is to EHB 1006 as printed February 14, 2014.)